

# **In the United States Patent and Trademark Office**

In re the Application of:

William Kress Bodin	)	
Serial Number: 09/935,393	)	Group: 3629
Docket Number: AUS920010655US1	)	Examiner: Traci Casler
Filed on: 08/23/2001	)	
For: "System and Method for Intelligent	)	
Merchandise Indicator and Product	)	
Information Provision"	)	

## **APPEAL BRIEF**

*(First Reinstatement)*

### ***Real Party in Interest per 37 CFR §41.37(c)(1)(I)***

The subject patent application is owned by International Business Machines Corporation of Armonk, NY.

### ***Related Appeals and Interferences per 37 CFR §41.37(c)(1)(ii)***

None.

### ***Status of Claims per 37 CFR §41.37(c)(1)(iii)***

Claims 1 - 30 are finally rejected for a second time. The appeal of the rejections of Claims 1 - 30 is hereby reinstated.

### ***Status of Amendments after Final Rejections per 37 CFR §41.37(c)(1)(iv)***

Subsequent to Appeal of the first final rejections, prosecution was reopened by the Examiner, and independent Claims 1, 11 and 21 were amended in response to citation of a new reference. Subsequent to receipt of the second set of final rejections, independent Claims 1 and 21 have been amended to correct minor typographical errors.

***Summary of the Claimed Subject Matter per 37 CFR §41.37(c)(1)(v)***

The invention locates a human user in a retail space, such as a showroom or store, then matches the user's preferences or objectives in shopping to items physically nearby the user in the retail space. When a matching item is determined to be physically proximate to the user, the invention draws the user's attention to a physical display, such as a sample on a shelf or table top, by illuminating an LED on the product's display fixture or by turning a spotlight onto the sample. For example, a user Jane has configured her shopping objectives and preferences for purchasing a red pair of shoes in a size 6, preferably from the manufacturer ABC Shoe Co. As she enters a showroom for XYZ Shoe and Accessories Store in a shopping mall, the invention locates her in the showroom, accesses a stock database to search for shoes matching her preferences, finds such a pair, and engages a spotlight which shines on the sample shoes on a display shelf on a nearby wall.

More specifically, Claim 1 sets forth a method for achieving these benefits to the user by:

- (a) responsive to a consumer moving into the proximity of a retail display fixture (*para. 0040*), electronically establishing an identity of the consumer (*paras. 0022, 0024, 0040; fig. 5 #52*) by a consumer identification unit mounted on or near said retail display fixture (*para. 0029*);
- (b) automatically accessing a persistent datastore to retrieve a set of preferences associated with said consumer identity (*para. 0026 and 0040; fig. 5 #53*);
- ©) automatically determining if one or more products on the retail display fixture matching said preferences (*paras. 0026, 0041, and 0042; fig. 5 #54*); and
- (d) activating a display unit indicator (*para. 0045; fig. 7 #73*) mounted on or near said retail display fixture (*paras. 0026 and 0042; fig. 4 #44; fig. 5 #55*) for said products which match said preferences such that the attention of said proximate consumer is directed to the physical location of the matching products (*para. 0036*).

Likewise, independent Claim 11 sets forth a computer readable medium encoded with software for providing these benefits to a user, wherein the software performs the steps of:

- (a) responsive to a consumer moving into the proximity of a retail display fixture (*para. 0040*), electronically establishing an identity of the consumer (*paras. 0022, 0024, 0040; fig. 5 #52*) by a consumer identification unit mounted on or near said retail display fixture (*para. 0029*);
- (b) automatically accessing a persistent datastore to retrieve a set of preferences associated with said consumer identity (*para. 0026 and 0040; fig. 5 #53*);
- (c) automatically determining if one or more products on the retail display fixture matching said preferences (*paras. 0026, 0041, and 0042; fig. 5 #54*); and
- (d) activating a display unit indicator (*para. 0045; fig. 7 #73*) mounted on or near said retail display fixture (*paras. 0026 and 0042; fig. 4 #44; fig. 5 #55*) for said products which match said preferences such that the attention of said proximate consumer is directed to the physical location of the matching products (*para. 0036*).

And, similarly, independent Claim 21 sets forth a system for achieving these functions and benefits, including:

- (a) a consumer identifier unit adapted to establish an identity of a consumer responsive to said consumer moving into the proximity of a retail display fixture, said consumer identification being unit mounted on or near said retail display fixture (*paras. 0022, 0024, 0029, 0040; fig. 5 #52*);
- (b) a consumer preference retriever for accessing a persistent datastore to retrieve a set of preferences associated with said consumer identity (*para. 0026 and 0040; fig. 5 #53*);
- (c) a preference comparator which receives said set of preferences and compares those to characteristics of products on the retail display fixture to determine if one or more products match said preferences (*paras. 0026, 0041, and 0042; fig. 5 #54*); and
- (d) at least one display unit indicator (*para. 0045; fig. 7 #73*) mounted on or near said retail display fixture (*para. 0029*) which, responsive to a match being found, is activated such that the attention of the proximate consumer is directed towards the physical location of the matching product (*paras. 0026, 0036, and 0042; fig. 4 #44; fig. 5 #55*).

***Grounds for Rejection For Which Review is Sought per 37 CFR §41.37(c)(1)(vi)***

Appellant requests review of the final rejections of Claims 1-5, 10-15, 20-25 and 30 under 35 U.S.C. §102(e) as being anticipated by US Patent Application Publication 20010028301 to Geiger et al. (hereinafter referred to as "Geiger"), and requests review of the final rejections of Claims 6-9, 16-19 and 26-29 under 35 U.S.C. §103(a) as being unpatentable over Geiger (no secondary reference applied).

***Arguments per 37 CFR §41.37(c)(1)(vii)***

Appellant respectfully submits that errors in the examination of these claims have occurred, and that the claims should be allowed, because:

- (a) the cited references fail to teach or suggest all of the claimed elements, steps, and limitations;
- (b) an amendment by the applicant has not been properly considered;
- (c) the claims have not been properly examined in light of the specification; and
- (d) motivation and suggestion under 35 U.S.C. §103(a) have not been properly found in the references.

**Rejections of Claims 1, 11, and 21 as being anticipated by Geiger**

Claims 1, 11, and 21 are independent claims setting forth analogous embodiments of the invention as a method, an article of manufacture (e.g. a computer readable medium encoded with software), and a system.

In the Office Action, the Examiner stated on Page 2 (emphasis present in original text):

"As to claims 1, 11 and 21 Geiger teaches:

Identifying a consumer **when the shopper pushing the cart most into a transceiver location** the consumer identification unit is mounted on the cart which is "near" the display. (Pg.4 Pg. 48-49 Pg. 6 ¶ 73).

Retrieving preferences of consumer(Pg. 6 ¶ 73 Pg 8 105).

Matching products with preferences(Pg. 1 ¶ 9; Pg. 5 ¶ 58).

**Activating a display unit "near" a retail fixture, the display unit directs the users attention to the location (Pg. 1 ¶ 9 Pg. 7 ¶ 92).  
\*\*\*the transceivers also function to flash lights to direct consumer attention).**

Appellant believes that the Examiner has used bold type face to indicate additions to the rationale (relative to the previous Office Action) which are directed towards Appellant's previous amendment, in which two substantial changes were made (key amendments emphasized by Appellant):

Claim 1:

A method for indicating that a product or item on display matches a set of consumer preferences comprising the steps of:

**responsive to a consumer moving into the proximity of a retail display fixture**, electronically establishing an identity of [[a]] said consumer **by a consumer identification unit mounted on or near said retail display fixture**;

automatically accessing a persistent datastore to retrieve a set of preferences associated with said consumer identity;

automatically determining if one or more products on said retail display fixture match said preferences; and

~~providing~~ activating a display unit indicator ~~physically near or mounted on or near~~ said retail display fixture for said products which match said preferences such that said **the attention of said proximate consumer is directed to the physical location** of the matching products.

Please notice that the phrase "*. . . physically near or mounted on said retail display . . .*" has been amended to read "*. . . mounted on or near said retail display fixture . . .*". Appellant respectfully submits that this phrase should be interpreted in light of the specification as equivalent to "*. . . mounted on or mounted near said retail display fixture . . .*", instead of as meaning "*. . . mounted on or being near said retail display fixture . . .*".

Please also notice that the phrase "*. . . responsive to a consumer moving into the proximity of a retail display fixture . . .*" has been amended to the first step of Claim 1.

Similar changes were made to Claims 11 and 21.

Appellant respectfully submits that the Examiner's interpretation of Claims 1, 11, and 21

is in error, and that these phrases have not been considered properly in light of the specification.

Beginning on Page 4, the Examiner has reasoned that:

"Applicant argues that Geiger is directed towards only stores or showrooms in which shopping carts are used.

. . . In response to applicant's argument that Geiger is directed towards only stores or showrooms in which shopping carts are used, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Applicants claims do not preclude the display being mounted on a shopping cart which is "near" a retail display. Furthermore, as indicated in Pg. 1 ¶ 9 Geiger discloses that the transceivers can function as red flashing red light to direct the users attention... may be positioned within a particular store as desired(near a display)."

Appellant respectfully disagrees with Examiner's statement that "[a]pplicants claims do not preclude the display being mounted on a shopping cart which is 'near' a retail display".

"Mounting On or Near" is not the same as "Being Near". Examiner's argument relies upon the actual claim phrase:

*". . . mounted on or near said retail display fixture . . . "*

to be interpreted as:

*". . . mounted on said retail display fixture or being mounted on a shopping cart near said retail display fixture . . . "*

because Geiger is reasoned by the Examiner to show a consumer identification unit mounted to a shopping cart which is pushed near a retail display fixture.

However, the word "or" in the actual claim phrase connects the alternatives "on" and "near" relative to "MOUNTED". In other words, "*mounted on or near*" means "*mounted on or mounted near*", not "*mounted on or being near*".

Geiger does not teach "mounted on a retail display fixture", but instead teaches "mounted on a shopping cart which can be pushed near a retail display fixture". Geiger does not explicitly disclose a consumer identification unit being fixedly mounted on the retail display fixture.

There is no disclosure cited by the Examiner of Appellant's specification which supports the Examiner's broadening of the claim phrase as such. Claims are part of the specification, and thus must be examined in light of the teachings of the specification, and cannot be examined separately from the specification, as recently clarified by the Federal Circuit in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005)(en banc). As pointed out by the Court in this decision, 37 CFR §1.75 defines the claims as an integral part of the specification, and not separate from the specification:

37 CFR 1.75. Claims

(a) The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention or discovery.

As such, the claims must be read from the vantage point of an ordinarily skilled person in the art who is also armed with the knowledge and information set forth in the specification in order to understand the meaning of the terms and scope of the claims.

Negative Claiming is Not Required by Law. Appellant respectfully submits that the Examiner's statement regarding what the Appellant has or has not "precluded" in the claims is improper reasoning for a rejection. As cited above, 37 CFR §1.75 requires the Appellant to claim what he or she considers to be his or her invention, but does not require the Appellant to claim what his or her invention *is not*. Such "negative claiming" is not required because it could be an endless recitation of things which the invention is not.

Static Positioning of the Consumer Identification Unit. In the Office Action, item 17, starting on Page 4, the Examiner has also reasoned:

. . . Applicant arguments that the instant applicant is claiming "static" consumer identification unit and alerting mechanism. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant

relies (i.e., statically positioned) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir 1993) Applicants claims do not preclude the display and alert mechanism from being "mounted" on a shopping cart. The shopping cart is in the store, it is therefore near the retail display. Additionally the transceivers have previously been identified to flash alerts to the consumer. The transceivers are mounted through out the store which again are near the display.

Appellant respectfully disagrees for the foregoing reasons that the claims must "preclude" what the invention is not. Appellant is only required to set forth in positive language what the Appellant considers to be his or her invention.

Further, Appellant respectfully disagrees that the relative positions and movement of the user and the components of the invention have not been claimed as argued by the Appellant. The term "static" was used in the Appellant's previous arguments as a way to expound or further explain how the claims should be interpreted in light of the specification.

Appellant respectfully submits that the mechanical and physical interrelationships of the components as claimed are sufficient to support interpretation that (a) the display fixture is relatively immobile and statically positioned, (b) the consumer identification unit is mounted on or mounted near the display fixture and thus is also relatively immobile and statically positioned, and ©) the consumer or user is relatively mobile.

The claim phrase:

"responsive to a consumer moving into the proximity of a retail display fixture, . . . "

specifically states that the invention is triggered by movement of the consumer. The term "retail display fixture" refers to a relatively immobile type of furniture or piece of retail equipment. The sub-term "fixture" is especially supportive of such an definition, where "fixture" itself means something that is "fixed" or "fixedly placed". The disclosure supports this interpretation, as well, giving several examples of well-known retail display fixture types (tables, risers, slat walls, etc.).

Further, the claim phrase:

" . . . by a consumer identification unit mounted on or near said retail display fixture . . . "

establishes a physical and positional relationship between the consumer identification unit and the retail display fixture, thus making the consumer identification unit also relatively immobile.

Geiger's invention, however, places their display unit onto the shopping cart which moves with the consumer. Their transmission unit is mounted near the retail display fixture. Their invention's operation is triggered when the shopping cart with display unit is pushed into range of their transmission unit. Thus, their system is actually responsive to the *shopping cart* moving into the proximity of the retail display fixture, not just the consumer moving into the proximity of the retail display fixture.

The patentable distinction of the two different arrangement of components is most evident when one considers operation of the two systems when the consumer has no shopping cart, or when the user leaves a shopping cart to walk towards a retail display. In either scenario, the user of Geiger's invention would not be alerted to anything on the retail display because the cart-mounted display unit would not be near the retail display fixture. However, due to differences in the structure and method of Appellant's invention, a consumer in these scenarios would be alerted to the presence of products on the retail display fixture meeting the consumer's preferences through use of the Appellant's invention.

Static Positioning of Geiger's Identification Unit. In the Office Action item 18, starting on Page 5, the Examiner has further argued:

"As to applicants arguments that it would not be obvious to modify Geiger, if in fact it truly did fail to teach the "static" display, as it would change the principle of operation of Geiger's invention. Applicant is making arguments towards a 103 rejection when the limitations being argued are part of the independent claims which were giving a anticipation rejection, not an obviousness rejection."

Appellant respectfully disagrees. Geiger's display unit, which is mounted to the movable

shopping cart, functions as their identification unit. Appellant was pointing out that Geiger in fact does not teach this aspect of the claims as required by §102, and is secondarily pointing out that it is contrary to a principle of operation of Geiger to interpret Geiger's disclosure in such a manner. As a result, not only does Geiger fail to teach all of the claim steps, elements, and limitations, but Geiger does not support any modifications or combinations in such a manner.

Distinction Between Prior Art and Claims, and Different Outcomes. In the Office Action item 19, starting on Page 5, the Examiner has argued:

Applicant argues that Geiger identifies the consumer once "within the retail space using consumer identification units (Pg. 12 ¶ 4 of response dated January 31, 2007). Where as applicants invention identifies the consumer as they approach a retail display fixture. The applicant fails to draw a distinction between the prior art and the instant application. If a consumer is within a retail store would the consumer be approaching retail displays? The applicants limitation of being on OR near leave the claims open to broad interpretation. Even if applicant were to remove the alternative limitation Geiger still reads on the limitations. Geiger teaches transceivers are statically mounted on retail displays and flash alerts. The structure of applicants application does not create a different outcome. Applicant argues that the instant application could have consumer identification units located near physical points of access, doors, gates. How does this differ from a cart in the store with the consumer identification. The physical points are "near" the display just as the shopping cart.

Appellant respectfully disagrees with the Examiner's position and paraphrasing of the Appellant's argument. With respect to drawing a distinction between Geiger's structure or process and that which is claimed, Appellant has pointed out the structural and commensurate operational differences between Geiger's display unit mounted on a moving shopping cart, and Appellant's identification unit which is mounted stationary retail display fixture, which renders difference responses (e.g. one is responsive to changing shopping cart position, the other is responsive to changing user position).

With respect to the argument that "[t]he structure of applicants application does not

create a different outcome", Appellant respectfully disagrees. As described above, if Geiger's consumer leaves his or her cart to proceed towards a retail display fixture, their transmission unit will not make contact with their cart-mounted display unit, and no alerting of the consumer will occur. In other scenarios, such as open areas of shopping malls and on convention floors where shopping carts are not prevalent, Geiger's system is completely inoperative, of course. However, in each of these scenarios, the Appellant's invention is operative and useful, and produces a useful outcome (the consumer is properly alerted as to the presence of products meeting the consumer's preferences). Thus, the two systems, Geiger's and Appellant's, do indeed provide different outcomes, due to differences in structure and operational methods.

Co-location of Consumer Identification Unit with Retail Display Fixture. In the Office Action item 20, starting on Page 6, the Examiner has also argued that:

"As to applicants arguments that the consumer identification units are "co-located" with displays and with the products and that Geiger is silent to "co-location." The examiner notes applicant is silent as well to "co-location". Applicant has a display on or NEAR a retail fixture and applicant has an consumer identification unit on OR near the retail fixture. As claimed, applicant only has one consumer identification unit per retail fixture."

Appellant respectfully disagrees. The Appellant's use of the term "co-located" was to expound or further explain the interpretation of the claim language which Appellant believes is reasonable in light of the specification. Appellant respectfully submits that if a first item is "mounted on or mounted near" (e.g. "mounted on or near") a second item, that the two items are necessarily by definition "co-located".

For these reasons, Appellant respectfully requests allowance of Claims 1, 11, and 21.

**Rejections of Claims 2, 12, and 22 as being Anticipated by Geiger**

In the Office Action, the Examiner reasoned on Page 3, item 7, that Geiger anticipates Claims 2, 12, and 22:

" . . . As to claims 2,12 and 22 Geiger teaches the identifying with a magnetic strip card (Pg.6 ¶ 73)."

Appellant respectfully disagrees. In fact, Geiger states at pg. 6, paragraph 73:

" . . . when the shopper enters his or her code into the shopping cart display unit 12 by a data card swipe . . . "

Geiger's display unit is affixed to the shopping cart, while Claims 2, 12, and 22 specify that the claimed consumer identification unit, which is mounted on or mounted near the retail display fixture, performs a magnetic card swipe. Geiger is silent as to a consumer identification unit mounted on or mounted near a retail display fixture reading a magnetic card.

For these reasons, Appellant respectfully requests allowance of Claims 2, 12, and 22.

**Rejections of Claims 3, 13, and 23 as being Anticipated by Geiger**

In the Office Action, the Examiner reasoned on Page 3, item 8, that Geiger anticipates Claims 3, 13, and 23:

"As to claims 3,13 and 23 Geiger teaches accessing a database.(Pg 8 ¶ 95)"

Appellant respectfully disagrees. Claim 3 depends from Claim 1, Claim 13 depends from Claim 11, and Claim 23 depends from Claim 21. As such, Geiger fails to teach all of the claimed steps, elements, and limitations discussed regarding the rejections of Claims 1, 11, and 21.

For these reasons, Appellant respectfully requests allowance of Claims 3, 13, and 23.

**Rejections of Claims 4, 14, and 24 as being Anticipated by Geiger**

In the Office Action, the Examiner reasoned on Page 3, item 9, that Geiger anticipates Claims 4, 14, and 24:

"As to claims 4, 14 and 24 Geiger teaches matching price (Pg. 5 ¶ 58)."

Applicant respectfully disagrees. Claims 4, 14, and 24 specifically recite matching a "preferred price", wherein the term "preferred" relates to a preference of the identified consumer. However, Geiger's paragraph 0058 states the advertisement may contain "a sale price", which is a price presumably set by the merchant, and is not a preference indicated by the consumer.

Further, Claim 4 depends from Claim 1, Claim 14 depends from Claim 11, and Claim 24 depends from Claim 21. As such, Geiger fails to teach all of the claimed steps, elements, and limitations discussed regarding the rejections of Claims 1, 11, and 21.

For these reasons, Appellant respectfully requests allowance of Claims 4, 14, and 24.

**Rejections of Claims 5, 15, and 25 as being Anticipated by Geiger**

In the Office Action, the Examiner reasoned on Page 3, item 10, that Geiger anticipates Claims 5, 15, and 25:

"As to claims 5, 15 and 25 Geiger teaches indicator as light, text etc(Pg. 1 ¶ 9)."

Applicant respectfully disagrees. Claim 5 depends from Claim 1, Claim 15 depends from Claim 11, and Claim 25 depends from Claim 21. As such, Geiger fails to teach all of the claimed steps, elements, and limitations discussed regarding the rejections of Claims 1, 11, and 21.

For these reasons, Appellant respectfully requests allowance of Claims 5, 15, and 25.

**Rejections of Claims 10, 20 and 20 as being Anticipated by Geiger**

In the Office Action, the Examiner reasoned on Page 3, item 11 that Geiger anticipates Claims 5, 20 and 20:

"As to claims 10, 20 and 20 Geiger teaches the database maintaining inventory information.(Pg. 4 ¶ 48 & Pg. 8 ¶ 99)."

Applicant believes this rejection was intended to be of Claims 10, 20 and 30, whereas these three claims all recite additional steps, elements, and limitations regarding checking a database to see if a matching product is also in stock (e.g. if a pair of shoes matching the consumer's size is in stock, etc.).

Applicant respectfully disagrees with the Examiner's position. Geiger's paragraph 0048 mentions that the store (e.g. the merchant or retailer) may have a "central computer for management of the store's inventory and accounting", but makes no mention of matching the consumer's preferences to a particular item and checking to see if it is in stock, and if so, illuminating the retail display fixture indicator. Thus, there is no enabling disclosure regarding this step or function.

Further, Geiger's paragraph 0099 mentions an SMIP reporting tool which can produce a report "inventory of the number of working and non-working display units 12 or transceiver units 65 in a particular store". Inventorying the number of working and broken components of the invention is not the same as determining if any products which match the consumer's preferences are actually in stock and available for purchase, of course, because there is no mention in Geiger that their components of their invention (e.g. their transceivers and their display units) are for sale. It is only reasonable to presume that they are property of the store, like the shopping carts on which they are mounted, and thus are not available for sale and are not something a consumer could prefer to purchase.

Further, Claim 10 depends from Claim 1, Claim 20 depends from Claim 11, and Claim 30 depends from Claim 21. As such, Geiger fails to teach all of the claimed steps, elements, and limitations discussed regarding the rejections of Claims 1, 11, and 21.

For these reasons, Appellant respectfully requests allowance of Claims 10, 20, and 30.

**Rejections of Claims 6-9, 16-19, and 26-29 as being Obvious in view of Geiger**

In the Office Action, the Examiner reasoned on Page 3, item 13, that claims 6-9, 16-19, and 26-29 are unpatentable under 35 U.S.C. §103(a) over Geiger alone:

"As to claims 6-9, 16-19 and 26-29 Geiger teaches an intelligent merchandise indicator in which the system is further used as an advertising/promotion system for direct marketing to consumers. However, Geiger fails to teach sending product reference information to consumer via email message. It would have been obvious to combine Geiger's direct marketing system with an email system foremailing the information to the consumers as online advertising is a commonly used form of direct marketing campaigns."

Applicant agrees that Geiger fails to teach sending product information to the consumer electronically, but respectfully disagrees that it would have been obvious to one skilled in the art at the time of Appellant's invention to modify Geiger to meet these claim steps, elements, and limitations. Appellant especially disagrees that it would have been obvious *how* to implement such a modification to Geiger, whereas to render a claim obvious, the reference must also provide an enabling disclosure along with a suggestion to make the modification.

Claim 6 depends from Claim 1, Claim 16 depends from Claim 11, and Claim 26 depends from Claim 21. These dependent claims further specify steps and system components for retrieving an information data set associated with the products which match said preferences, and transmitting the retrieved information data set to a preferred electronic destination associated with said consumer such that said consumer may collect said information data set for review and reference. Examiner's presumption that the electronic address is an email address is incorrect, it could be a Personal Digital Assistant ("PDA"), a cell phone, or an Internet Appliance (see paras. 0019 and 0038).

There must be a suggestion in the Geiger to make such a modification (Geiger is a sole reference used for this rejection) in order for rejection under §103(a) to be proper. Geiger only once mentions email in paragraph 0102, then only as an alert to a technician (not a consumer) regarding a system failure (not an available product matching a consumer's preference). Geiger mentions direct marketing campaigns in paragraph 0105, but does not explain if this is a

traditional direct marketing campaign (e.g. traditional postal, television, etc.), or if it is enhanced to include any sort of electronic messaging.

There are no other mentions found by Appellant, or cited by the Examiner, of direct marketing or emailing within the Geiger disclosure. Thus, there is no suggestion in Geiger to make the proposed modification to meet the steps, elements, and limitations of Claims 6, 16, and 26, nor is their enabling disclosure to support the rejection.

Claims 7 - 9 depend from Claim 6, Claims 17 - 19 depend from Claim 16, and Claims 27 - 29 depend from Claim 21, and therefore recite the same steps, elements, and limitations which are not suggested or taught by Geiger as Claims 6, 16, and 26.

Further, Claim 6 depends from Claim 1, Claim 16 depends from Claim 11, and Claim 26 depends from Claim 21. As such, Geiger fails to teach all of the claimed steps, elements, and limitations discussed regarding the rejections of Claims 1, 11, and 21.

For these reasons, Appellant respectfully requests allowance of Claims 6 - 9, 16 - 19, and 26 - 29.

For these reasons, Appellant requests reversal of the rejections of claims 1 - 30.

Respectfully,

A handwritten signature in black ink that reads "Robert Frantz". The signature is written in a cursive, flowing style with a large, stylized "R" and "F".

Robert H. Frantz, Reg. No. 42,553  
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**Claims Appendix**  
*per 37 CFR §41.37(c)(1)(viii)*  
**Clean Form of Amended Claims**

1. (previously presented) A method for indicating that a product or item on display matches a set of consumer preferences comprising the steps of:

responsive to a consumer moving into the proximity of a retail display fixture, electronically establishing an identity of said consumer by a consumer identification unit mounted on or near said retail display fixture;

automatically accessing a persistent datastore to retrieve a set of preferences associated with said consumer identity;

automatically determining if one or more products on said retail display fixture match said preferences; and

activating a display unit indicator mounted on or near said retail display fixture for said products which match said preferences such that the attention of said proximate consumer is directed to the physical location of the matching products.

2. (original) The method as set forth in Claim 1 wherein said step of establishing the identity of a consumer is selected from the group of reading a radio frequency identifier tag, reading a bar code, reading a magnetic stripe, and receiving input of a personal identifier code.

3. (original) The method as set forth in Claim 1 wherein said step of accessing a persistent datastore comprises accessing a database.

4. (original) The method as set forth in Claim 1 wherein said step of determining if any products match said preferences includes a step from the group of matching a consumer size, matching a preferred color, and matching a preferred price.

5. (original) The method as set forth in Claim 1 wherein said step of providing an indicator associated with products which match said preferences includes a step from the group of illuminating a lamp, illuminating a light emitting diode, and providing a text display.

6. (original) The method as set forth in Claim 1 further comprising the steps of:

retrieving an information data set associated with said products which match said preferences; and

transmitting said information data set to a preferred electronic destination associated with said consumer such that said consumer may collect said information data set for review and reference.

7. (original) The method as set forth in Claim 6 wherein said step of transmitting said information data set comprises transmitting an electronic mail message to an electronic mail address.

8. (original) The method as set forth in Claim 6 wherein said step of transmitting said information data set comprises transmitting an electronic file to a electronic mail address.

9. (original)

The method as set forth in Claim 6 wherein said step of transmitting said information data set comprises transmitting an electronic mail message to a persistent computing device selected from the group of an Internet-enabled wireless telephone, a wireless networked personal digital assistant, and a wireless Internet browser appliance.

10. (original):

The method as set forth in Claim 1 further comprising the steps of:

accessing an inventory datastore; and

determining if a product which matches said preferences is also in stock.

11. (previously presented) A computer readable medium encoded with software for indicating that a product or item on display matches a set of consumer preferences, said software causing a computer to perform the steps of:

responsive to a consumer moving into the proximity of a retail display fixture, electronically establish an identity of said consumer by a consumer identification unit mounted on or near said retail display fixture;

automatically access a persistent datastore to retrieve a set of preferences associated with said consumer identity;

automatically determine if one or more products on said retail display fixture match said preferences; and

activating a display unit indicator mounted on or near said retail display fixture for said products which match said preferences such that the attention of said proximate consumer is directed towards the physical location of the matching products.

12. (original) The computer readable medium as set forth in Claim 11 wherein said software for establishing an identity of a consumer is comprises software for performing a step selected from the group of reading a radio frequency identifier tag, reading a bar code, reading a magnetic stripe, and receiving input of a personal identifier code.

13. (original) The computer readable medium as set forth in Claim 11 wherein said software for accessing a persistent datastore comprises software for accessing a database.

14. (original) The computer readable medium as set forth in Claim 11 wherein said software for determining if any products match said preferences comprises software for performing a step from the group of matching a consumer size, matching a preferred color, and matching a preferred price.

15. (original) The computer readable medium as set forth in Claim 11 wherein said software for providing an indicator associated with products which match said preferences includes a software for performing a step from the group of illuminating a lamp, illuminating a light emitting diode, and providing a text display.

16. (original) The computer readable medium as set forth in Claim 11 further comprising software for performing the steps of:

retrieve an information data set associated with said products which match said preferences; and

transmit said information data set to a preferred electronic destination associated with said consumer such that said consumer may collect said information data set for review and reference.

17. (original) The computer readable medium as set forth in Claim 16 wherein said software for transmitting said information data set comprises software for transmitting an electronic mail message to an electronic mail address.

18. (original) The computer readable medium as set forth in Claim 16 wherein said software for transmitting said information data set comprises software for transmitting an electronic file to an electronic mail address.

19. (original) The computer readable medium as set forth in Claim 11 wherein said software for transmitting said information data set comprises software for transmitting an electronic mail message to a persistent computing device selected from the group of an Internet-enabled wireless telephone, a wireless networked personal digital assistant, and a wireless Internet browser appliance.

20. (original) The computer readable medium as set forth in Claim 11 further comprising software for performing the steps of:

accessing an inventory datastore; and

determining if a product which matches said preferences is also in stock.

21. (previously presented) A system for indicating that a product or item on display matches a set of consumer preferences comprising:

a consumer identifier unit adapted to establish an identity of a consumer responsive to said consumer moving into the proximity of a retail display fixture, said consumer identification unit being mounted on or near said retail display fixture;

a consumer preference retriever for accessing a persistent datastore to retrieve a set of preferences associated with said consumer identity;

a preference comparitor which receives said set of preferences and compares those to characteristics of products on said retail display fixture to determine if one or more products match said preferences; and

at least one display unit indicator mounted on or near said retail display fixture which, responsive to a match being found, is activated such that the attention of said proximate consumer is directed towards the physical location of the matching product.

22. (original) The system as set forth in Claim 21 wherein said consumer identifier unit is adapted to perform a function selected from the group of reading a radio frequency identifier tag, reading a bar code, reading a magnetic stripe, and receiving input of a personal identifier code.

23. (original) The system as set forth in Claim 21 wherein said consumer preference retriever is adapted to access a database.

24. (original) The system as set forth in Claim 21 wherein said preference comparitor is adapted to perform a function from the group of matching a consumer size, matching a preferred color, and matching a preferred price.

25. (original) The system as set forth in Claim 21 wherein said indicator comprises an indicator from the group of a lamp, a light emitting diode, and a text display.

26. (original) The system as set forth in Claim 21 further comprising:

a product information data set retriever for retrieving information associated with said product which matches said preferences; and

an information data set transmitter adapted to transmit said information data set to a preferred electronic destination associated with said consumer such that said consumer may collect said information data set for review and reference.

27. (original) The system as set forth in Claim 26 wherein said information data set transmitter is adapted to transmit an electronic mail message to an electronic mail address.

28. (original) The system as set forth in Claim 26 wherein said information data set transmitter is adapted to transmit an electronic file to a electronic mail address.

29. (original) The system as set forth in Claim 26 wherein said information data set transmitter is adapted to transmit an electronic mail message to a persistent computing device selected from the group of an Internet-enabled wireless telephone, a wireless networked personal digital assistant, and a wireless Internet browser appliance.

30. (original) The system as set forth in Claim 21 further comprising an inventory datastore query processor for accessing an inventory control system to determine if a product which matches said preferences is also in stock.

**Evidence Appendix**  
*per 37 CFR §41.37(c)(1)(ix)*

No evidence has been submitted by applicant or Examiner pursuant to 37 CFR §§1.130, 1.131, or 1.132.

**Related Proceedings Appendix**  
*per 37 CFR §41.37(c)(1)(x)*

No decisions have been rendered by a court or the Board in the related proceedings as identified under 37 CFR §41.37(c)(1)(ii).